IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 3RD JANUARY 2007 / 13TH PAUSHA 1928

RSA.No. 711 of 2005()

AS.178/2002 of ADDL.DISTRICT COURT, THRISSUR
OS.890/1996 of I ADDL.M.C.,THRISSUR

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APPELLANT/APPELLANT/1ST DEFENDANT

FRANCIS, AGED 73 YEARS,
S/O.KARAKADA DOMINIC, PANAMKUTTICHIRA ANGADI,
EDAKUNI VILLAGE, THRISSUR TALUK.

BY ADV. SRI.JIJO PAUL

RESPONDENTS: RESPONDENTS/PLAINTIFFS 1 TO 3 AND 2ND DEFENDANT

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1. VARGHESE @ KOCHUVARAPPAN,
S/O.AKKARA LONAPPAN, PANAMKUTTICHIRA ANGADI,
EDAKUNI VILLAGE, THRISSUR TALUK.

2. SEBASTIAN, S/O.AKKARA LONAPPAN,
PANAMKUTTICHIRA AGNADI, EDAKUNI VILLAGE,
THRISSUR TALUK.

3. KOCHUTHRESIA,
W/O.AKKARA LONAPPAN,
PANAMKUTTICHIRA ANGADI, EDAKUNI VILLAGE,
THRISSUR TALUK.

4. JOHNY, S/O.KOKKAN GEORGE,
VILVATTOM DESOM, THRISSUR TALUK.

BY ADV. SRI.RANJITH XAVIER
SRI.K.B.GANGESH

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 03/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Thottathil B. Radhakrishnan, J.

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R.S.A.No.711 of 2005

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Dated this the 3rd day of January, 2007.

JUDGMENT

The first defendant in a suit for declaration and eviction, is the appellant. The second plaintiff sued him for eviction under the Kerala Buildings (Lease and Rent Control) Act, 1965 by filing a rent control petition. That proceeding ended up in a finding that there was a, prima facie, bona fide dispute of title and that eviction cannot be ordered in that proceeding.

2. Thereafter, the plaintiffs sued defendants 1 and 2 alleging that there was an entrustment and that it was only a licence and in the alternative, for eviction in terms of the grounds under Act 2 of 1965.

3. In defence, the appealing first defendant contended that there was an oral agreement for sale of the suit property in his favour and that he was put in possession pursuant thereof. He contended that as against the total consideration of Rs.5,000/-, he had

been paying at the rate of Rs.135/- per month. This defence version did not find favour before the courts below on the basis of the evidence on record.

4. The findings of facts on the basis of which the defence has been negatived have been arrived at on a complete and proper appreciation of the evidence on record and do not warrant interference in second appeal under Section 100 of the Code of Civil Procedure.

5. All that is left is the question whether the first defendant had perfected title. Either way, such case has to fall. This is because his alternative plea was adverse possession. Having set up an agreement for sale, he had admitted the paramount title of the plaintiff. Such plea of agreement for sale having failed, the plea of adverse possession also has to necessarily fail since he stood proclaiming the title of the plaintiff, to sustain his suit for specific performance.

6. The courts below have concurrently found that

the defendants are liable to be evicted, as sought for, by the plaintiffs. In further support, I may also notice the decision in **Nafeesu v. Hajrabi (1992 (1) K.L.T. 554)** wherein this Court categorically laid down that in a suit falling under second proviso to Section 11(1), plaintiff need not prove any one or more of the grounds for eviction under Section 11 of Act 2 of 1965. I am in complete and respectful agreement with the said proposition.

Hence, this second appeal fails. It is hence dismissed in limine.

Thottathil B.Radhakrishnan,
Judge.

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